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### **STRATEGIC OBJECTIVE #2**

**(Governance of Economic and Legal Systems Improved)**

#### **What ails our judiciary?**

**By Atty. Rita Linda V. Jimeno**

**(Source: Manila Standard Today Internet Edition – 9/12/05)**

For far too long, talk has gone around that the Philippine judiciary grinds ever so slowly. The sad part of the story is that this has spread to other parts of the globe, too, further hurting our already fragile political image .

And it is not without reason that the talk is such. For after all, almost 20 years after the late strong man Ferdinand Marcos was thrown out of the Palace, the cases filed against him, his former First Lady and his family for the recovery of wealth plundered, are yet to see a conclusion.

We need not even go too far back in time. The case filed against former President Joseph Estrada for plunder has been ongoing in the Sandiganbayan since 2001 despite the admirable zeal of the government’s prosecution team in prosecuting the case and in not seeking postponements of trial.

In the Sandiganbayan, the special tribunal dedicated to hearing graft and corruption cases, the average gestation period before a case is terminated runs between 6 and 7 years. There are cases which have been in the dockets of the Sandiganbayan for longer periods. And considering that the nature of the cases tried in this graft court involves government officials and employees who have illegally enriched themselves in office, the delay in the prosecution could send a signal that crime does pay and that whatever risks there are, are worth taking. For, after all, an offender could continue to enjoy the fruits of his illegal acts while the case goes through a protracted trial.

In the regular courts, criminal and civil cases normally last a minimum of two years. Some cases last for over 10 years especially those involving property disputes, inheritance or complicated, but low-profile, criminal cases. There is emphasis on low-profile because high-profile criminal cases, like the one which involved a congressman charged with raping a minor, could enjoy preferential attention. Still, despite the high-profile nature of some criminal cases, such as the Galman double murder case, which lasted way beyond the term of President Cory Aquino, they could still drag on and on. If a case is appealed, one can expect an average of two years before it is resolved in the Court of Appeals. And, an equal or more, number of years in the Supreme Court depending on the complexities of the case.

With this as backdrop, the Rule of Law Effectiveness (ROLE) funded by the USAID-sponsored study tours to Washington D.C. for Sandiganbayan justices, prosecutors and defense attorneys to observe how speedy trial works in the United States.

This writer, in her capacity as president of the Philippine Bar Association, was among those invited by ROLE, to join the second delegation of Filipinos to visit Washington D.C. to observe speedy trial and to study case management in the United States.

With this writer were exchange visitors Chief State Prosecutor Jovencito Zuño and Chief Public Attorney Persida Rueda Acosta, of the Department of Justice; the Executive Director of the Anti-Money Laundering Council, Vicente Aquino; Prosecutors from the office of the Ombudsman, Humprey Monteroso, Pilarita Lapitan and Elvira Chua; Solicitor Thomas Laragan of the Office of the Solicitor General, lawyer Marissa Cabreros, head of the Revenue Enforcement Service of the Bureau of Internal Revenue; lawyer Joel Cadiz, president of the Integrated Bar of the Philippines and lawyer George Carmona of the Rule of Law Effectiveness.

And what did we learn in this trip to Washington D.C.?

That the Philippine judicial system is figuratively and literally worlds away, budget-wise, systems-wise and technology-wise, from its American counterpart.

To start off, the budget of the entire Philippine judiciary according to Cadiz, is a measly .9 percent (or less than 1 percent) of the national budget. Chief Public Attorney Persida Acosta of PAO lamented that the budget of the entire Public Attorneys' Office is equivalent to only the annual pork barrel of two congressmen.

No wonder the physical appearance of our courts and halls of justice alone cannot compare even in the wildest of imaginations to the grand, awe-inspiring courtrooms in Washington D.C. and District of Maryland which we visited.

In the US, in civil cases, paperless filing of pleadings have been implemented in district courts. A litigant is assigned a code and his lawyer files his complaint or answer or other pleadings via the computer. The judge immediately gets to read what the parties file without having to retrieve voluminous files. In the Philippines, folders-upon-folders of case files stashed in rundown cabinets, in hallways or even in stairways leading to the courts, are a common spectacle.

Judges and lawyers enjoy the use of microphones in US courtrooms. Proceedings are videotaped for easy reference when an issue arises as to what has been said by any witness or any lawyer.

But these are, in fact, among just the minor perks which the American bench and bar enjoy.

What is more awesome is that while only a mere 5 percent of all cases filed proceed to trial in the United States, the reverse is true in the Philippines.

In this country, the bigger majority of cases filed proceed to full blown trial resulting in work overload for judges and prosecutors. Hence, when a case is heard today, the likelihood is that the next trial date will follow some two to three or more months later. In some municipalities, hearing dates are six months or so apart from one another.

And what does this bring? It results in witnesses forgetting about what they have seen or heard. Or worse, it results in witnesses disappearing, losing interest or passing away. It also results in evidence getting lost or destroyed.

While in the US, appeals or petitions to higher courts to review an interlocutory order or an intermediate order issued by a lower court that relates to a question of law or a procedural issue — is never entertained, in the Philippines this is one of the major delays in court proceedings. To illustrate, a judge issues an order admitting the testimony of a witness despite the objection of a party on the ground that said testimony was immaterial and irrelevant. Sometimes, if only to delay the proceedings of the case, the adverse party goes to a higher court such as the Court of Appeals to ask the appellate court to review whether it was correct for the judge to so rule or not.

This then halts the proceedings in the trial court while the Court of Appeals' resolution on the petition for review is being awaited.

The Rules of Court of the Philippines provide way too many remedies, allowing for dilatory tactics to succeed.

In the US, when a criminal case is filed it is calendared for a pretrial within a period of about 70 days from filing.

In the pretrial stage, assuming there is no plea of guilty or settlement or plea bargaining, trial dates are set. Once trial starts, it goes on until it is terminated within approximately 90 days, in accordance with the Speedy Trial Law of the United States. And because only about 5 percent of cases filed proceed to trial, the judges and the grand jury can devote time to hearing them.

In this jurisdiction, while our Constitution guarantees the right to speedy trial to the accused, the reality is that, it is the accused who — more often — occasions delay, especially accused persons who are out on bail while on trial or are probably guilty but would not agree to a guilty plea or even to plea bargaining.

The Supreme Court of the Philippines under the stewardship of Chief Justice Hilario Davide has been endeavoring to institute reforms in the judiciary. It has in fact institutionalized mediation in the pretrial stage of cases to unclog or declog court dockets. But it will take more than mediation and not a few substantial reforms to effect speed in the disposition of court cases.

And it will require serious efforts not only from the justices and judges of this land but from defense lawyers as well who seem to flaunt the skill of delaying cases as a measure of their aptitude.

If this country were to move forward as a stable and credible state worthy of global respect, government must not treat its judicial branch as a poor relation but one with equal powers and entitlement. It must arm the judiciary not only with an equally respectable budget but must pass the needed laws for judicial reform to carry out the constitutional mandate of speedy trial.